

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:09-cr-00039**

UNITED STATES OF AMERICA

vs.

JASON CAMPBELL

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ORDER

THE MATTER is before the Court, *sua sponte*, upon the pro se filing of Defendant's Notice of Appeal (Doc. No. 569), on April 18, 2011. The Court entered Judgment (Doc. No. 437) in Defendant's case on August 30, 2010, approximately 231 days prior to Defendant's filing Notice of Appeal. At the time Judgment was entered, Federal Rule of Appellate Procedure 4(b) allowed Defendant fourteen days within which to note his appeal. Fed. R. App. P. 4(b)(1)(A). Because the Notice was untimely filed, the Court construes the document, filed pro se, as also containing a motion to extend the deadline for filing the Notice of Appeal.

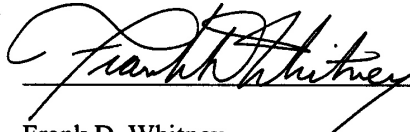
A district court may extend the time for filing a notice of appeal upon a finding of excusable neglect or good cause. Fed. R. App. P. 4(b)(4). However, such a motion must be made within thirty days of the expiration of the time otherwise provided by Rule 4. Here, the Court does not have authority to extend the deadline for filing a notice of appeal because the defendant did not file his motion in the time required by Rule 4, which expired on or about October 13, 2010. United States v. Schuchardt, 685 F.2d 901, 902 (4th Cir.1982) (compliance with Fed. R. App. P. 4(b) is mandatory). Even if counsel failed to respond to the defendant or file a timely notice of appeal when directed to do so, extending the direct appeal deadline would not be the appropriate remedy. United States v. Reyes, 759 F.2d 351, 353 (4th Cir.1985) (§ 2255 action is appropriate remedy for failure to file timely notice of appeal).

IT IS THEREFORE ORDERED that Defendant's Motion for an Extension of Time is DENIED.

THE CLERK is directed to serve this Order on counsel for the Government; Defendant Jason Campbell c22693-058, Federal Correctional Institution (Beckley), P.O. Box 350, Beaver, West Virginia, 25813; and Defendant's trial counsel, Mr. Richard L. Brown, Jr., Law Offices of Richard L. Brown, Jr., 309 Lancaster Avenue, Monroe, North Carolina 28112.

IT IS SO ORDERED.

Signed: April 21, 2011


Frank D. Whitney
United States District Judge

